

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KIMBERLY D. MALONEY

Case No. 2010-53

OAH No. 2009081109

Registered Nurse License No. 513926  
Nurse Practitioner Certificate No. 12026  
Nurse Practitioner Furnisher  
Certificate No. 12026  
Public Health Nurse Certificate No. 55127

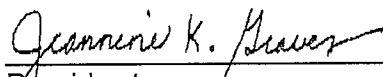
Respondent.

**DECISION AFTER NON-ADOPTION**

The attached Decision After Non-Adoption is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 27, 2011.

IT IS SO ORDERED this 28<sup>th</sup> day of December 2010.

  
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President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
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In the Matter of the Accusation Against:

KIMBERLY D. MALONEY  
1503 Apache Drive, Unit A  
Chula Vista, CA 91910

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Registered Nurse License No. 513926  
Nurse Practitioner Certificate No. 12026  
Nurse Practitioner Furnisher  
Certificate No. 12026  
Public Health Nurse Certificate No. 55127

Respondent.

**DECISION AFTER NON-ADOPTION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on March 29, 2010.

Deputy Attorney General Rita M. Lane represented complainant.

Kimberly D. Maloney (respondent) represented herself.

Oral and documentary evidence was received and the matter was submitted on March 29, 2010.

On April 7, 2010, Administrative Law Judge Roy W. Hewitt issued his Proposed Decision. On July 6, 2010, the Board issued its Notice of Non Adoption of the Proposed Decision. On September 23, 2010, the Board issued its Order Fixing Date for Submission of Written Argument. After review of the entire administrative record including the transcript and written argument from both parties, the Board hereby renders its decision in this matter.

**FACTUAL FINDINGS**

1. The Accusation against respondent was filed by Louise Bailey, M.Ed., RN (complainant), while acting in her official capacity as the Interim Executive Officer of the

Board of Registered Nursing, Department of Consumer Affairs, State of California (the board).

2. On August 4, 1995, the board issued Registered Nurse License No. 513926 to respondent (a.k.a. Kimberly D. Kakuda). Respondent's license was in full force and effect at all times relevant to the allegations contained in the Accusation.

3. On September 8, 2000, the board issued Nurse Practitioner Certificate No. 12026 to respondent. Respondent's certificate was in full force and effect at all times relevant to the allegations contained in the Accusation.

4. On May 10, 2001, the board issued Nurse Practitioner Furnisher Certificate No. 12026 to respondent. Respondent's certificate was in full force and effect at all times relevant to the allegations contained in the Accusation.

5. On February 6, 1996, the board issued Public Health Nurse Certificate No. 55127 to respondent. Respondent's certificate was in full force and effect at all times relevant to the allegations contained in the Accusation.

*At the Outset of the Hearing Respondent Admitted the Following Facts*

6. On or about November 13, 2006, the San Diego Regional Pharmaceutical Narcotic Enforcement Team (RxNET) received a report that respondent was forging prescriptions for controlled substances using a prescription pad stolen from a San Diego doctor filling the prescriptions at a pharmacy in Bonita.

7. On or about November 28, 2006, an RxNET agent conducted a review of the CURES<sup>1</sup> database and discovered that respondent regularly received prescriptions for Oxycontin,<sup>2</sup> Lortab,<sup>3</sup> and Actiq<sup>4</sup> prescribed by Dr. JR and filled at Bonita Pharmacy.

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<sup>1</sup> CURES, a California prescription monitoring program, provides patient activity reports (PAR) to the medical community, investigative referrals to the Bureau of Narcotics Enforcement field offices, print-out requests to outside law enforcement for assistance in investigations, specialized reports to researchers, and statistical data to determine drug trends either statewide or region specific.

<sup>2</sup> Oxycontin is the brand name for the controlled-release oral formulation of oxycodone, designated by Health and Safety Code section 11055, subdivision (b)(1)(N) and Business and Professions Code section 4022 as a Schedule II controlled substance and a dangerous drug.

<sup>3</sup> Lortab is a brand name for Hydrocodone, designated by Health and Safety Code section 11055, subdivision (c)(8), Business and Professions Code section 4022 as a Schedule II controlled substance and a dangerous drug.

<sup>4</sup> Actiq is the brand name for the oral lozenge form of fentanyl. Fentanyl is designated by Health and Safety Code section 11055, subdivision (b)(1)(N) and Business and Professions Code section 4022 as a Schedule II controlled substance and a dangerous drug.

8. On or about December 1, 2006, the reporting source e-mailed photographs of the prescription pad he found in respondent's possession to the RxNET agent.

9. On or about December 6, 2006, Dr. JR verified with the RxNET agent the prescriptions he wrote respondent on specific dates in July, August and November 2006, when respondent was his patient.

10. On or about December 7, 2006, the RxNET agent obtained from Bonita Pharmacy prescriptions issued to respondent. Discrepancies were easily noted when comparing the known signatures of Dr. JR to the signatures forged by respondent. The forged prescriptions also matched the sequential serial numbers of the prescription pad found in respondent's possession. Dr. JR stated that he kept prescription pads in his examination room and that respondent probably stole them from there.

11. On or about December 18, 2006, an RxNET agent interviewed respondent at the San Diego Bureau of Narcotics Enforcement office. Respondent initially denied forging any prescriptions, but eventually admitted that she had stolen Dr. JR's prescription pad from his La Jolla office. Respondent stated that she forged prescriptions for Oxycontin and Actiq to administer to herself for migraine headaches. Respondent further admitted that she would dissolve the Actiq in a saline solution and inject herself with it. RxNET referred the matter to the San Diego County District Attorney's Office for prosecution.

12. On or about April 17, 2007, in the matter of the *People of the State of California v. Kimberly D. Maloney*, in San Diego County Superior Court, Case No. SCD204087, respondent pled guilty to violating Health and Safety Code section 11173, subdivision (a) (obtaining a prescription for controlled substances by fraud, deceit, misrepresentation, subterfuge, and concealment), a felony crime substantially related to the qualifications, functions and duties of a licentiate/certificate holder.

13. As a result of respondent's guilty plea, the court ordered deferred entry of judgment for a term of one-year and six-months, and payment of fees in the amount of \$250. Respondent's criminal matter was then diverted pursuant to Penal Code section 1000 and respondent was ordered to complete a court-ordered drug treatment program.

#### *Mitigating Evidence and Evidence of Rehabilitation*

14. Respondent began suffering from migraine headaches in 1990, and tried a variety of prescribed treatment including, beta-blockers, calcium channel blockers, neuroleptics (used off-label for migraines), other analgesics, anti-depressants, and Botox injections. In 2000, respondent's neurologist began prescribing different narcotic medications such as Oxycontin, Vicodin, Actiq, and Dilaudid for maintenance and rescue therapy. Over time, the dosages of the medications were increased in an attempt to give respondent relief from her migraine pain. During this same time-frame, respondent was undergoing extreme stress in her personal life. She was going through a tumultuous divorce, a death in the family, caring for her child, and she the victim of criminal voyeurism. The

intensity of respondent's migraines increased as the stressors in her life increased. Respondent realized she was becoming addicted to the narcotics she was taking for her migraines. She mentioned her concern to her physician, but he did not believe intervention was warranted. Soon thereafter, respondent stole her physician's prescription pad and began forging prescriptions for her own use.

15. Soon after respondent's drug addiction became apparent, her family intervened (respondent's sobriety in November 29, 2006), and respondent enrolled in the world renowned Scripps Memorial Hospital McDonald's Center outpatient drug treatment program. Respondent enrolled in the McDonald Center program on December 21, 2006 and successfully completed the program on February 8, 2007.

16. On February 8, 2007, upon successful completion of the McDonald's Center outpatient treatment program respondent voluntarily began participating in the McDonald's Center After-Care Program. Respondent successfully completed this program in February of 2008, after one-year of participation.

17. On April 13, 2007, respondent commenced the Nursing Diversion Program at Maximus. Respondent successfully participated in the Nursing Diversion Program for 22 months when she was asked to leave the program because of an alleged technical violation of the Diversion Program's rules. While in the Diversion Program, respondent was working as a Nurse Practitioner in the bone marrow transplant unit at the University of California, San Diego (UCSD) Medical Center. When patients were admitted to the unit, respondent, using a preprogrammed computer check sheet, admitted the patients by checking the appropriate admission box that appeared on the computer screen. By checking the box, the computer program automatically issued a standard set of admission orders. In some instances, the set orders included an order for the patient to receive Oxycodone. Consequently, when the fact respondent had been "prescribing" Oxycodone came to the attention of the Diversion Program, respondent was asked to leave even though she had been in full compliance with the strict Diversion Program requirements, including: Calling every morning between 6 and 7 a.m.; taking random drug tests several times per month with no "dirty" tests; turning in monthly paperwork on time; attending AA and NA meetings five to seven days per week; attending weekly nurse-to-nurse meetings; completing 16 CEU's on substance abuse; calling monthly to check in with her case manager; and always getting permission before leaving San Diego. Even though respondent did not successfully complete the entire Diversion Program, due to the alleged technical violation, she did successfully participate in the program for over six months without any substantive violations or problems.

18. On October 22, 2008, respondent successfully completed her court ordered Penal Code section 1000 diversion program and her guilty plea of violating Health and Safety Code section 11173, subdivision (a) was "set aside" and the criminal matter was "dismissed" by the court.

19. On June 18, 2007, respondent underwent a psychiatric examination by Marina Katz, M.D. of Psychiatric Centers at San Diego. Dr. Katz reported that respondent

“demonstrated no symptoms of affective disorder, anxiety disorder or psychotic condition.” (Respondent’s Exh. 5.) Respondent was then seen weekly for psychotherapy for over two years, and her last progress letter, dated September 9, 2009 indicated that respondent: “Went to AA meetings weekly, attended a ‘nurse to nurse’ meeting, and met with her sponsor on a weekly basis. [Respondent] cooperatively worked on the Steps [12-Step Program].” (Respondent’s Exh.5.)

20. Respondent has a sponsor, continues participating in AA and NA meetings, and has actively helped others in the recovery process. Respondent presented numerous character reference letters, and the testimony of several witnesses who have known her personally and professionally for substantial periods of time. Based on the testimony and the reference letters, it is abundantly clear that respondent is an extremely talented practitioner who renders quality treatment to her patients. Respondent graduated at the top of her class when she graduated from the nursing school at San Diego State University. She then went on to obtain her Master’s degree, and graduated Summa Cum Laude from the University of Pennsylvania’s Nurse Practitioner Program.

21. Respondent has made significant changes in her lifestyle to alleviate the extent and frequency of her migraine headaches. She has changed her diet and she exercises on a regular basis by working out in a gym, and by engaging in long distance cycling and boxing. Respondent is so focused on her rehabilitation that she not only refuses to take any potentially addicting medications; she also monitors the ingredients contained in the foods she eats.

22. In sum, respondent does not “take what happened to me lightly,” she fully appreciates the nature and extent of her addiction and the need to maintain her sobriety. Respondent has successfully maintained her sobriety, and has suffered no relapses since her sobriety date of November 29, 2006.

#### *Costs*

23. The costs of the investigation and enforcement of this matter total \$9,642.50.

### LEGAL CONCLUSIONS

1. Cause for discipline exists pursuant to California Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (a) because, the facts set forth in Findings 6 through 12, establish that respondent committed acts of unprofessional conduct by possessing Schedule II controlled substances without having valid prescriptions, in violation of Business and Professions Code section 4060.

2. Cause for discipline exists pursuant to California Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b) because, the facts set forth in Findings 6 through 12, establish that respondent committed acts of unprofessional conduct

by using Schedule II controlled substances without having valid prescriptions. Such self-treatment with Schedule II controlled substances was dangerous and potentially injurious to respondent, and risked impairing her ability to safely practice as a licentiate/certificate holder.

3. Cause for discipline exists pursuant to California Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (e) because, the facts set forth in Findings 6 through 12, establish that respondent forged prescriptions for controlled substances using a prescription pad stolen from a physician. Such conduct is substantially related to the qualifications, functions, and duties of a licentiate/certificate holder.

4. Cause for discipline exists pursuant to California Business and Professions, Code sections 2761, subdivisions (a) and (d) because, the facts set forth in Findings 6 through 12, establish that respondent violated the Nursing Practice Act and regulations adopted pursuant to the Act.

5. Although the costs of the investigation and enforcement of this matter are reasonable, in the interest of justice, the Board will not order cost recovery.

6. Complainant requested the court to order that respondent be placed on probation for three years on terms 1 through 19 of the board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation. While it is understandable that complainant would like the board to be able to monitor respondent's sobriety for a reasonable period of time, in view of the substantial evidence of rehabilitation and sobriety presented by respondent during the hearing, deviation from the board's recommended guidelines is warranted in this case. One year of probation is adequate for the board to monitor respondent to ensure public protection. Additionally, since respondent has already completed 16 units of continuing education focused on substance abuse, undergone a psychiatric examination (along with over two years of psychotherapy), participated in and successfully completed the McDonald's Center substance abuse program, participated in, and successfully completed a court ordered Penal Code section 1000 diversion program, and over six months of the Nursing Diversion Program, Recommended Conditions of Probation numbers 10, 14 and 18 are redundant and not warranted by the facts of this case. The remaining terms and conditions contained in the guidelines from 1 through 19 are warranted in order to allow the board to monitor respondent's sobriety, thus ensuring public protection.

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Registered Nurse License Number 513926, Nurse Practitioner Certificate No. 12026, Nurse Practitioner Furnisher Certificate No. 12026, and Public Health Nurse Certificate No. 55127 issued to Respondent Kimberly D. Maloney are revoked. However, the revocations

are stayed and respondent is placed on probation for one (1) year on the following terms and conditions:

**SEVERABILITY CLAUSE** – Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**CRIMINAL COURT ORDERS:** If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license



status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

**(5) SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

**(6) FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

**(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or

separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

**(8) SUPERVISION** - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

**(9) EMPLOYMENT LIMITATIONS** - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

**(10) VIOLATION OF PROBATION** - If a respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

**(11) LICENSE SURRENDER** - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

**(12) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program

prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program, or a licensed mental health examiner and/or other ongoing recovery groups.

**(13) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -**

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

**(14) SUBMIT TO TESTS AND SAMPLES -** Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.


In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

This Decision shall become effective on January 27, 2011.

IT IS SO ORDERED this 28<sup>th</sup> day of December 2010.

  
JEANNINE K. GRAVES  
BOARD PRESIDENT  
BOARD OF REGISTERED NURSING  
STATE OF CALIFORNIA

1 EDMUND G. BROWN JR.  
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8 *Attorneys for Complainant*

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-53  
13 **ACCUSATION**

13 **KIMBERLY D. MALONEY**  
14 1503 Apache Drive, Unit A  
Chula Vista, CA 91910

15 Registered Nurse License No. 513926  
16 Nurse Practitioner Certificate No. 12026  
Nurse Practitioner Furnisher Certificate  
17 No. 12026  
Public Health Nurse Certificate No. 55127

18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

22 1. Louise Bailey, M.Ed, RN (Complainant), brings this Accusation solely in her official  
23 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of  
24 Consumer Affairs.

25 2. On or about August 4, 1995, the Board of Registered Nursing issued Registered  
26 Nurse License Number 513926 to Kimberly D. Maloney, also known as Kimberly D. Kakuda  
27 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to  
28 the charges brought herein and will expire on July 31, 2011, unless renewed.

3. On or about September 8, 2000, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 12026 to Respondent. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

4. On or about May 10, 2001, the Board of Registered Nursing issued Nurse Practitioner Furnisher Certificate Number 12026 to Respondent. The Nurse Practitioner Furnisher Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

5. On or about February 6, 1996, the Board of Registered Nursing issued Public Health Nurse Certificate Number 55127 to Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

## JURISDICTION

6. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

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## STATUTORY PROVISIONS

### 9. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

### 10. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

### 11. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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1 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible  
2 entries in any hospital, patient, or other record pertaining to the substances described  
3 in subdivision (a) of this section.

4 12. Section 4022 of the Code states

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
6 self-use in humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
8 without prescription," "Rx only," or words of similar import.

9 (b) Any device that bears the statement: "Caution: federal law restricts this  
10 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
11 import, the blank to be filled in with the designation of the practitioner licensed to use  
12 or order use of the device.

13 (c) Any other drug or device that by federal or state law can be lawfully  
14 dispensed only on prescription or furnished pursuant to Section 4006.

15 13. Section 4060 of the Code states, in pertinent part, that no person shall possess any  
16 controlled substance, except that furnished to a person upon the prescription of a physician,  
17 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

#### 18 REGULATORY PROVISIONS

19 14. California Code of Regulations, title 16, section 1444, states:

20 A conviction or act shall be considered to be substantially related to the  
21 qualifications, functions or duties of a registered nurse if to a substantial degree it  
22 evidences the present or potential unfitness of a registered nurse to practice in a  
23 manner consistent with the public health, safety, or welfare. Such convictions or acts  
24 shall include but not be limited to the following:

25 (a) Assaultive or abusive conduct including, but not limited to, those violations  
26 listed in subdivision (d) of Penal Code Section 11160.

27 (b) Failure to comply with any mandatory reporting requirements.

28 (c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

#### 30 COST RECOVERY

31 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
32 administrative law judge to direct a licentiate found to have committed a violation or violations of  
33 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
34 enforcement of the case.

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## DRUGS

16. Hydrocodone, sold under the brand name Lortab, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(J), and is a dangerous drug pursuant to Business and Professions Code section 4022.

17. Oxycontin, the brand name for the controlled-release oral formulation of oxycodone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.

18. Actiq is the brand name for the oral lozenge form of fentanyl. Fentanyl is a Schedule II controlled substance as designated by Health and Safety Code Section 11055, subdivision (c)(8), and is a dangerous drug pursuant to Business and Professions Code section 4022.

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## FACTS

19. On or about November 13, 2006, the San Diego Regional Pharmaceutical Narcotic Enforcement Team (RxNET) received a report that Respondent was forging prescriptions for controlled substances using a prescription pad stolen from a San Diego doctor and filling the prescriptions at a pharmacy in Bonita.

20. On or about November 28, 2006, an RxNET agent conducted a review of the CURES<sup>1</sup> database and discovered that Respondent regularly received prescriptions for Oxycontin, Lortab, and Actiq prescribed by Dr. JR and filled at Bonita Pharmacy.

21. On or about December 1, 2006, the reporting source e-mailed photographs of the prescription pad he found in Respondent's possession to the RxNET agent.

22. On or about December 6, 2006, Dr. JR verified with the RxNET agent the prescriptions he wrote for Respondent on specific dates in July, August and November 2006 when Respondent was his patient.

<sup>1</sup> CURES, a California prescription monitoring program, provides patient activity reports (PAR) to the medical community, investigative referrals to the Bureau of Narcotics Enforcement field offices, print-out requests to outside law enforcement for assistance in investigations, specialized reports to researchers, and statistical data to determine drug trends either statewide or region specific.

1        23. On or about December 7, 2006, the RxNET agent obtained from Bonita Pharmacy  
2 prescriptions issued to Respondent. Discrepancies were easily noted when comparing the known  
3 signatures of Dr. JR to the signatures forged by Respondent. The forged prescriptions also  
4 matched the sequential serial numbers of the prescription pad found in Respondent's possession.  
5 Dr. JR stated that he kept prescription pads in his examination room and that Respondent  
6 probably stole them from there.

7        24. On or about December 18, 2006, an RxNET agent interviewed Respondent at the San  
8 Diego Bureau of Narcotics Enforcement office. Respondent initially denied forging any  
9 prescriptions, but eventually admitted that she had stolen Dr. JR's prescription pad from his La  
10 Jolla office. Respondent stated that she forged prescriptions for Oxycontin and Actiq to  
11 administer to herself for migraine headaches. Respondent further admitted that she would  
12 dissolve the Actiq in a saline solution and inject herself with it. RxNET referred the matter to the  
13 San Diego County District Attorney's Office for prosecution for burglary and obtaining  
14 prescriptions by fraud and deceit.

15        25. On or about April 17, 2007, in the matter of the *People of the State of California v.*  
16 *Kimberly D. Maloney*, in San Diego County Superior Court, Case No. SCD204087, Respondent  
17 pled guilty to violating Health and Safety Code section 11173, subdivision (a), obtaining a  
18 prescription for controlled substances by fraud, deceit, misrepresentation, subterfuge, and  
19 concealment, a felony.

20        26. As a result of Respondent's guilty plea, the court granted deferred entry of judgment  
21 for a term of 1 year and 6 months, and payment of fees in the amount of \$250. Respondent was  
22 ordered to enroll in and complete a Penal Code section 1000 drug treatment program.

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**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Possession of Controlled Substances Without a Prescription)**

27. Respondent is subject to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (a) of the Code in that on or about and between June 8, 2006 and December 1, 2006, Respondent possessed the Schedule II controlled substances Hydrocodone, Oxycontin, and Actiq without a prescription in violation of section 4060 of the Code as described in paragraphs 19-26, above.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Use of a Controlled Substance)**

28. Respondent is subject to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (b) of the Code in that on or about and between June 8, 2006 and December 1, 2006, Respondent used, and admitted using, controlled substances that she obtained without a prescription as described in paragraphs 19-26, above. Such self-treatment with Schedule II narcotics was dangerous and potentially injurious to Respondent and risked impairing her ability to safely practice as a registered nurse.

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Prescription Forgery)**

29. Respondent is subject to disciplinary action under sections 2761, subdivision (a) and 2762, subdivision (e) of the Code in that on or about and between June 8, 2006, and December 1, 2006, Respondent forged prescriptions for controlled substances using a prescription pad stolen from a physician as described in paragraphs 19-26, above. In Respondent's plea dated April 17, 2007, Respondent stated she "obtained a narcotic drug (oxycontin) by means of a forged prescription." Such conduct is substantially related to the qualifications, functions or duties of a registered nurse pursuant to California Code of Regulations, title 16, section 1444.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of the Nursing Practice Act)


30. Respondent is subject to disciplinary action under sections 2761, subdivisions (a) and (d) of the Code, in that on or about and between June 8, 2006, and December 1, 2006, Respondent directly and knowingly violated the Nursing Practice Act and regulations adopted pursuant to it, when she stole a prescription pad from a physician and forged prescriptions for controlled substances for her own use, as described in paragraphs 19-26, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 513926, issued to Kimberly D. Maloney;
2. Revoking or suspending Nurse Practitioner Certificate Number 12026, issued to Kimberly D. Maloney;
3. Revoking or suspending Nurse Practitioner Furnisher Certificate Number 12026, issued to Kimberly D. Maloney;
4. Revoking or suspending Public Health Nurse Certificate Number 55127, issued to Kimberly D. Maloney;
5. Ordering Kimberly D. Maloney to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
6. Taking such other and further action as deemed necessary and proper.

DATED: 7/31/09

  
LOUISE BAILEY, M.Ed. RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2009804539